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Issue Date: 29 April 2004

CASE NO.: 2002-LHC-2820
2002-LHC-2821

OWCP NO.: No. 1-154983
No. 1-154985

In the Matter of:

RAYMOND BUCACCI,
Claimant,

v.

ELECTRIC BOAT CORPORATION,
Self-Insured Employer.

Appearances: Scott N. Roberts, Esq.
For Claimant

Kevin C. Glavin, Esq.
For Employer

Before: Stephen L. Purcell
Administrative Law Judge

DECISION AND ORDER AWARDING BENEFITS

This proceeding arises from a claim under the Longshore and Harbor Workers' Compensation Act ("Act" or "LHWCA"), 33 U.S.C. § 901 *et seq*. Claimant is seeking an award of permanent partial disability compensation with respect to his bilateral hands and knees.

A formal hearing was held in this case on March 24, 2003 in Middletown, Connecticut at which both parties were afforded a full opportunity to present evidence and argument as provided by law and applicable regulation. Claimant offered exhibits 1 through 8 which were admitted into evidence.[1] Employer offered exhibits A1 through A6 and B1 through B8 which were admitted into evidence.[2] ALJX 1 and 2 were marked for identification and admitted into evidence without objection. Both parties were given an opportunity to file post-hearing briefs,

[1] The following abbreviations will be used as citations to the record: "CX" for Claimant's Exhibits, "EX" for Employer's Exhibits, "ALJX" for Administrative Law Judge Exhibits, "Tr." for Transcript, and "R. Br." for Respondent's Post-hearing Brief.

[2] EX A1-A6 relate to Case No. 2002-LHC-2820, while EX B1-B8 relate to Case No. 2002-LHC-2821.

but only Employer chose to do so. The findings and conclusions which follow are based on a complete review of the entire record in light of the arguments of the parties, applicable statutory provisions, regulations, and pertinent precedent.

STIPULATIONS

The parties have stipulated (Tr. 5-7) and I find:

1. That the parties are subject to the Act.
2. That Claimant and Employer were in an employee-employer relationship at all relevant times.
3. That Claimant sustained an injury to his hands arising out of and in the course of his employment on January 30, 2002.
4. That a timely notice of injury was given by Claimant to Employer.
5. That Claimant filed a timely claim for compensation.
6. That Employer filed a timely first report of injury and notice of controversion.
7. That Claimant's average weekly wage at the time of the injury was $805.83 per week, and that the applicable compensation rate is $537.22
7. That Employer voluntarily paid compensation to Claimant for a five percent impairment to each hand, totaling $13,108.17 (24.4 weeks).
8. That Claimant reached maximum medical improvement ("MMI") with respect to his hands on April 4, 2002.

ISSUES

1. What is the nature and extent of Claimant's bilateral hand disability?
2. Whether Claimant sustained a work-related bilateral injury to his knees?
3. What is the nature and extent of any bilateral knee injury sustained by Claimant?

FINDINGS OF FACT

Raymond Edward Bucacci

Claimant, Raymond Bucacci, testified that he was born on January 9, 1954 (Tr. 15). His education consisted of high school and some courses at a community college. *Ibid.* At the time of this hearing, Claimant was single. *Ibid.* Before he started working for Employer in 1977, he had a variety of jobs, including building furniture for mobile homes, working in a machine shop, doing construction, and operating a forklift (Tr. 15-16).

Claimant testified that he was approximately 22 years old when he began working for Employer at Quonset Point Naval Air Station (Tr. 16). He was hired as an inside machinist and continued to work in that position for 26 years utilizing a variety of tools including radial drills, lathes, boring mills, and different types of milling machines (Tr. 16-17). However, some time ago, Employer eliminated the positions of toolmaker and inside and outside machinist, re-classifying them as installation technicians, and instituted a flexible system where all hourly workers could thereafter be used for any task, depending on Employer's needs. *Ibid.* Following

this change, Claimant continued to work as a machinist with two exceptions (Tr. 17). On one occasion, he was transferred for three or four months to work as an outside mechanic (on the waterfront where manufactured items were assembled inside cylinders). *Ibid.* Another time, he was temporarily assigned to work as an air tool repair technician, taking apart, cleaning and maintaining 100-ton jacks. *Ibid.*

Claimant testified that after working for Employer for some time, he started running more advanced machinery (Tr. 18). For the last two years he has been one of a few workers that run two machines part of the time (5-6 hours a day), for which he was paid an extra $2 an hour. *Ibid.* He runs two of the newest computerized vertical machining centers, writes programs for them, also does the tooling, and for the last year and a half his foreman has been Rick Rhiepe (Tr. 19). He added that he works first shift from 7:00 a.m. until 3:30 p.m., Monday through Friday, and does not work overtime by his own choice. *Ibid.*; Tr. 22. Claimant testified that he makes a variety of parts, both metal and plastic, and that he has manufactured "just about anything that goes inside of a submarine" (Tr. 20).

Claimant described the physical demands of his job as follows. He first has to find out what kind of program he is going to write, set up all the tooling on one machine, and execute a trial run (Tr. 20-21). After that, if he has to make several pieces, he can let the machine run and walk away to the other machine (Tr. 21). Claimant testified that he originally worked third shift, then second, then went back to third, but later started working the day shift when the new machines came (Tr. 21-22).

Claimant explained that his concern with his hands developed gradually over time. *Ibid.* He testified that he first experienced minor physical problems in his hands. *Ibid.* For example, while reading a newspaper at home one weekend, he noticed that his hands were tingling. *Ibid*. He further described a recent incident, testifying "the other day, I was trying to put a screw underneath the counter to the dishwasher, and I couldn't feel the hole where I wanted to put the screw in" (Tr. 22). Claimant added that the problems he experiences with his hands make it difficult to do a lot of "little things." *Ibid.* He testified that "I don't think I can say like exactly all of a sudden my hands were a problem. It is just a lot of little things." *Ibid.* Claimant further described an incident while he was driving a bicycle, stating his hands began to tingle so strongly that he had difficulty grasping the handlebars (Tr. 22-23). He added that his hands also bother him at work. For example, he recently tried to use a grinder on a larger piece of work, but was unable to do so because it was vibrating in his hands too much. *Ibid*. He then tried using a file instead, but the piece was too heavy for the file. *Ibid.* Finally, he just put the piece back in the machine, and used a cutter to break off the burr. *Ibid.* Claimant testified that his inability to use the grinder increased the amount of time it took him to do the job (Tr. 24).

Claimant also described how he used his hands in his work. He explained that the introduction of the new computerized equipment in 1989, has made his job "a lot better" and made him more efficient (Tr. 24-25, 32). He types a lot more with the computerized machines when he "run[s] the keyboards" and makes programs. He also has to lift the pieces on which he is working to deburr them (Tr. 25). According to Claimant, the size of the pieces that he manufactures ranges from "a small half ounce gear to 25 tons" (Tr. 26). When he works on large, heavy pieces, he stands on them and mills the top of the pieces with a table mover. *Ibid.*

Claimant further testified that he used to use grinding tools often, but because of the problem with his hands, he has now started using the machines and files to deburr the parts on which he works (Tr. 26). He stated that he has to deburr every part and identify it with an air operated etching tool (Tr. 27-28). Claimant further testified that he has used a variety of grinders (Tr. 27). One type (identified by him as a "whirlybird") was very large, but the workers' "favorite" was a four inch hand-operated disc grinder used primarily on small parts which did not require a lot of deburring. (Tr. 27-28). He also used small deburring tools, including something called a "flex wheel" which has sandpaper wrapped around a wheel (Tr. 28). Claimant testified that he used these types of hand tools, some of which vibrated "like little jack hammers," approximately one-half hour to forty-five minutes per shift (Tr. 28-29).

With respect to his bilateral knee complaints, Claimant testified that he has to stand on his feet in one place for extended periods of time to perform his job as an inside machinist and his knees began to ache after the wooden block floors at his job site were replaced in 1989 with cement (Tr. 30-31). He further attributes his knee problems to Employer's decision to take away all the chairs in his work area because it did not "look right" for mechanics to be sitting down (Tr. 31). Claimant stated that he could not sit down during his shift even when there was a lot of paperwork to complete or when he was writing programs (Tr. 31-32).

Claimant testified that everybody started having problems with their knees after the floors were changed to cement and "just a couple of years after that we started complaining" (Tr. 33). He stated also that his knees did not start hurting on a particular day, but rather began giving him problems "gradually." *Ibid.* Claimant further testified that he was not taking any medication for his knees because he did not like taking "any drugs or any chemicals" (Tr. 34).

With respect to his knee and hand conditions, Claimant testified that he saw Dr. Pearce Browning on at least two occasions based on a referral from his attorney. *Ibid.* According to Claimant, Dr. Browning spent almost two hours with him, questioned him about his history, and performed a very comprehensive physical examination that lasted approximately two hours (Tr. 35). Claimant testified that Dr. Browning examined and felt his knees and feet, and listened to his knees with a stethoscope (Tr. 35, 37). He also performed several tests and "found things that I didn't even know about." *Ibid.* According to Claimant, Dr. Browning took several x-rays (Tr. 36). Claimant further testified that Dr. Browning performed a physical examination of his hands, using a variety of tools to test the sensitivity of his hands (*i.e.*, a turning fork, a pin wheel, a brush, and a tool with pins) (Tr. 37-38). Claimant stated that Dr. Browning also tested his grip and pinch strength (Tr. 38-39). Dr. Browning referred him to Dr. Anthony Alessi for a nerve conduction study and another test which involved having his hands immersed in cold water (Tr. 39). In addition, Claimant had blood work done at the Backus Hospital in Norwich. *Ibid.*

Claimant testified that he noticed his hands were getting cold more easily and he has started wearing gloves often. *Ibid.* He added that machinists normally wear leather gloves to work, but he has started putting on additional cotton gloves inside his leather gloves for added protection. *Ibid.* He only wears gloves while handling manufactured pieces (e.g., while using the air inscription tools), and not when he has to use the touch screen or work with the keyboard on the computerized machines (Tr. 41-42). He testified that he has tried to use "anti-vibration gloves," but felt that they did not offer adequate protection because the ends of the fingers were

cut off and they left his fingertips unprotected (Tr. 41). He therefore wears "double gloves" instead and avoids using certain vibrating tools when he can. *Ibid.*

Complainant testified that he has been referred to several physicians by Employer, including Dr. Arnold Peter Weiss (Tr. 42). Claimant testified that Dr. Weiss' young age surprised him because he had read a magazine that described Dr. Weiss as one of the best doctors in Rhode Island. *Ibid.* He further testified that when Dr. Weiss examined him, he gripped Claimant's wrist, looked at his watch, and told him to let him know when his hand went numb. *Ibid.* After about one minute, Dr. Weiss stated that his hand seemed to be okay. *Ibid.* According to Claimant, this was the only test performed by Dr. Weiss, and the entire visit lasted only a few minutes (Tr. 43). Claimant stated that Dr. Weiss asked him what he did at work and did not believe that Claimant had sustained a hand injury (Tr. 44). In addition, Claimant stated that Dr. Weiss never asked him if he had a problem with cold hands. *Ibid*.

Claimant testified that he was also referred by Employer to Dr. Mariorenzi, who saw Claimant on two occasions. *Ibid.* As part of the examination of Claimant's knees, Dr. Mariorenzi asked Claimant to walk back and forth across the room once (Tr. 45). He further testified Dr. Mariorenzi did not use a stethoscope to listen to his knees. *Ibid.* Claimant stated that he brought his x-rays to the examination, and Dr. Mariorenzi did not order any additional x-rays. *Ibid.* According to Claimant, the physical examination by Dr. Mariorenzi lasted about a minute, any conversation they had was short, and none of the tests performed by Dr. Browning were performed by Dr. Mariorenzi. *Ibid.*

Based on his conversations with others, Claimant attributes his knee problems to his work and not simply to getting older (Tr. 46). He explained that as an "outdoors person," he meets a lot of different people. He goes hiking and kayaking, and used to "bike a lot." *Ibid.* In connection with these activities, he has met a lot of people in their 60's who are "in better shape" than he is. *Ibid.* He testified that he has noticed there are more people with knee problems among his co-workers than among people in other professions, such as teachers, doctors, and lawyers. *Ibid.*

Claimant testified with respect to the manifestation of his knee problem when he is not at work: "Well, my only problem is like when I go hiking some times I've got to bring wraps with me, and if one of my knees starts to feel anything, I just wrap the knee" (Tr. 46-47). He added that when one of his knees bothers him, he is careful about putting weight on the knee and about not "overdoing it" (Tr. 47). He never wraps his knees at work. *Ibid.* Two years ago, he was traveling around Italy for three weeks and experienced some relief from his knee problems which he attributes to all the walking he was doing. *Ibid.* The discomfort in his knees usually gets worse either late at night or early in the morning, and sometimes the bottoms of his feet "are really tough" in the morning. *Ibid.* Some days are worse than others, but the problems are gradually worsening (Tr. 48).

Claimant testified that Employer requires all employees who believe they have been injured to report their injuries within 24 hours or risk being written up. *Ibid.* On one occasion, Claimant reported an injury when a feed handle failed to disengage and "spun like a propeller"

into his knee. *Ibid.* Claimant stated that his knee "was sore [after the incident] but it wasn't really that bad," so he did not lose any work time or seek outside medical treatment. *Ibid.*

On cross-examination, Claimant testified that he was not a smoker and had never been one (Tr. 49). He reiterated that his non-work related activities include riding a bicycle, kayaking, and hiking. *Ibid.* He stated that he also works out in a gym, where he uses exercise bicycles, treadmills, and weights (including dumbbells). *Ibid.* He also uses an exercise machine that requires him to push weights with his legs (Tr. 49-50). He does not "power lift" or do squats with free weights. *Ibid.* With respect to the incident when he noticed tingling in his hands while he was riding a bicycle, he testified that he rode approximately 20-25 miles around Newport (Tr. 50). Claimant added with respect to his kayaking activities, he uses a "single" kayak mostly in the ocean around Newport (Tr. 54).

Claimant testified that he wears gloves at work mostly to protect his hands from injury (Tr. 51). He also stated that the concrete floors were installed in the shop over a period of time (Tr. 52). He stated that when the new machines were installed in 1989, he began working on "Maho" machines, but was later reassigned to "Trees." *Ibid.* Claimant testified that after the machine finishes cutting out the pieces being manufactured, the pieces always have burrs (Tr. 54). He added that he uses different tools to deburr pieces depending on the size of the burrs and the material from which the piece is made. *Ibid.*

With respect to his examination by Dr. Weiss, Claimant testified that Dr. Weiss examined only one of his hands and asked very few questions. *Ibid*. Claimant further testified that Dr. Mariorenzi was "even worse" since he was unprofessional and demeaned Claimant and his own office worker in Claimant's presence (Tr. 56). He repeated that Dr. Mariorenzi ordered him to walk back and forth across the room once and then stated that he was done (Tr. 57). Claimant could not recall having any physical examination of his knees or Dr. Mariorenzi asking him to flex his knees. *Ibid.*

Claimant testified that he normally did not work overtime as a matter of personal choice. *Ibid.* He acknowledged that he has not missed any time at work as a result of problems with his hands or knees (Tr. 58). He has continued to ride a bicycle, but not as much as he used to. *Ibid.* Claimant testified that he gave up kayaking due to a shoulder injury sustained the year before but planned on returning to it in the upcoming season since he has been working out at the gym all winter rehabilitating his shoulder. *Ibid.* He added that after his shoulder injury, he did only very light and easy "paddles in a short distance" (Tr. 59). He testified that his shoulder does not bother him when he does "street biking." *Ibid.* Claimant testified that he recently bought a mountain bike, but has not yet used it. *Ibid.* He explained that he decided to start mountain biking because he could not kayak as much as he used to and because it would allow him to "do the distance without having the major problems." *Ibid.* Claimant testified that his refusal to work overtime had nothing to do with his hand and knee problems (Tr. 60).

L. Pearce Browning, III, MD, PC

According to a report dated March 20, 2002, Dr. Browning examined Claimant on March 19, 2002 (CX 2 at 4). He noted that Claimant began working in 1977 and had been using

"various air tools, including grinders, air etchers, 6,000s, occasionally whirlybirds, and Clecos," and often used ball peen hammers. *Ibid.* The report describes Claimant's complaints with respect to his hands as numbness and tingling, particularly when he holds onto anything for a period of time. *Ibid.* Claimant also complained of cramps and fatigue in his hands and said that his hands get cold easily. *Ibid.* The report notes that Claimant sustained a fracture of the right wrist in 1975, prior to starting work with Employer (CX 2 at 5).

Dr. Browning noted that Claimant is right-handed and provided the following results of a grasp strength test:

	Right	Left
Trial 1	47	66
Trial 2	40	68
Trial 3	43	52

Ibid. Dr. Browning also reported the following results of a pinch strength test:

	Right	Left
Trial 1	7	12
Trial 2	8	12
Trial 3	8	11

(CX 2 at 6). The report further contains results of, *inter alia*, a pinwheel test, a light touch test, an electrical stimulation test, and a two-point discrimination test.

With respect to Claimant's knees, Dr. Browning notes that Claimant complained of aches and discomfort. *Ibid.* The report notes that, as an inside machinist, Claimant did not do a lot of kneeling, but had a number of prior knee injuries, including some twisting injuries.[3] *Ibid*.

Dr. Browning's report also indicates that x-rays of both knees showed no major compartment collapse (CX 2 at 6). Claimant's knees were examined by Dr. Browning and found to "grind under both kneecaps and grind in both compartments, medial and lateral." *Ibid.* He found no meniscal "snap," and concluded that the medial, lateral, and cruciate ligaments in both knees were "OK." *Ibid.* He added that the knees were not hot, red, swollen, or tender and noted that he would try to get the records of all of Claimant's knee injuries. *Ibid.*

Dr. Browning also prepared a report dated July 3, 2002 which describes Claimant's June 27, 2002 follow-up visit (CX 2 at 1). The report notes that vascular studies and a temperature test showed:

[3] A report dated January 23, 1987 notes that Claimant twisted his right knee when stepping over a pallet (CX 8 at 1). Two additional reports refer to a right knee injury sustained by Claimant on August 27, 1981 (CX 8 at 3-4). They state that Claimant reported that his right knee was tender and had "no strength," but he could not remember any specific injury. *Ibid.* The last report is dated January 27, 1981 and refers to an injury, apparently, to Claimant's left knee (CX 8 at 5). Claimant reported that he hit his knee on a machine when he slipped on a platform, and that the area above his left knee was numb as a result. *Ibid.*

> The left first digit has a very poor digital brachial ratio of .63, well below .8. He has a good deal of trouble with the cold weather. The cold challenge test is extremely positive. It was carried out to a full 20 minutes and he never regained normal temperatures.

Ibid. On this basis, Dr. Browning assigned Claimant an impairment of "15% for vascular." *Ibid.* He noted that he "would have assigned more, but his ambient temperatures are all right." *Ibid.*

With regard to the "neuromuscular" aspect of Claimant's hand condition, Dr. Browning stated that electrodiagnostic testing showed that Claimant had moderately severe damage to the median nerve and Claimant's "two-point values" were bad ("all of them were 7+ the fist time I saw him , and a bit better on June 27, 2002"). *Ibid*. Dr. Browning noted that Claimant's right grasp and pinch were significantly less than the left side, which was confirmed by the filament testing. *Ibid.* Dr. Browning concluded that Claimant had a "significant impairment to both large myelonated fibers and small non-myelonated fibers." *Ibid.* Dr. Browning further concluded that "[a]fter considerable consideration, I decided to assign 20% to each hand based on the electrodiagnostic studies, the loss of two-point, the ability to feel the finer filaments, and the loss of vibration." *Ibid.* Thus, Dr. Browning assigned a total of 35% permanent partial impairment for each of Claimant's hands. *Ibid.* Dr. Browning added that although the grasp was weaker on the right than on the left, no additional percentage points were assigned for the right. *Ibid*. Dr. Browning advised Claimant to keep his air tool exposure to a minimum, to avoid working at ambient temperatures below 50F, and to always use antivibration gloves (CX 2 at 1-2).

With regard to Claimant's knees, Dr. Browning "suggested" a 7 percent rating for each knee (CX 2 at 2). He stated that Claimant had significant chondromalacia of the patella, but noted that there was not enough compartment collapse to be significant. Dr. Browning indicated that he expected Claimant's knees to gradually get worse if he continued to "work on them extensively," and noted that Claimant's knees should be reviewed in 5-10 years (CX 2 at 2).

Attached to Dr. Browning's report is a note dated June 27, 2002, which contains the results of the neurologic tests performed (CX 2 at 3). This note shows that Dr. Browning assigned Claimant a 15 percent rating for vascular impairment. *Ibid.* In addition, Dr. Browning assigned an additional percentage for neurologic impairment, but this figure was later crossed out and is illegible. *Ibid.* The note states that "[t]his will make a total of 30% permanent partial impairment to each hand." *Ibid.*

Tom Bell, MD

According to a June 5, 2002 report prepared by Dr. Tom Bell, various tests were performed on Claimant's hands and arms that date at Vascular Associates in Norwich, Connecticut (CX 3 at 3-7). According to Dr. Bell, Claimant had normal pulse volume recordings and pressure readings in both arms and hands. *Id.* at 1. He further stated that there was no evidence of significant thoracic outlet compression. *Ibid.* However, he also noted that Claimant's cold stress exam was abnormal, as his temperatures had not retuned to baseline readings 20 minutes following ice water immersion. *Ibid.* The report further indicates that Claimant reported having cut his right 2nd and 3rd digits and having surgical repair in 1980, that

he described numbness and tingling of his hands and arms intermittently which occurred "while working, during active sports or just being quiet." *Id.* at 2.

Anthony G. Alessi, MD

Dr. Alessi of Neuro Diagnostics, LLC evaluated Claimant on May 14, 2002 (CX 4). His findings are reflected in a report bearing the same date. *Ibid.*[4] According to Dr. Alessi's report, Claimant complained primarily of bilateral hand numbness and tingling, which were most prominent in his right hand (CX 4 at 1). Claimant also reported weakness in his hands, stated that he had been dropping objects, reported a cold sensation in both hands, and said he experienced numbness in his hands when driving a car. *Ibid.* According to the report, while certain of Claimant's symptoms resulting from a January 11, 2002 shoulder injury had improved, the numbness in his hands remained unchanged. *Ibid.*

Dr. Alessi reported Claimant's grip strength was 25 kg in the right hand and 30 kg in the left hand (CX 4 at 2). He also found slightly diminished pin-prick sensation distally in both hands. *Ibid.* Electrodiagnostic studies revealed evidence of a moderately-severe bilateral median mononeuropathies at the wrists. *Ibid.*; CX 4 at 3.

A. Louis Mariorenzi, MD

According to a report dated June 14, 2002, Dr. Mariorenzi evaluated Claimant on June 10, 2002 (EX A5). Under the "History" section of the report, Dr. Mariorenzi noted that Claimant was 48 years old and injured his right shoulder on January 11, 2002. *Id.* at 1. Claimant complained of soreness in both knees and feet, which he experienced over the years without any specific injury, and which was not associated with any specific type of activity. *Ibid.* Claimant reported that on some days his knees hurt, but on other days they felt perfectly fine. *Ibid.* Claimant further reported that the pain in his feet was localized primarily to the area of the heels. *Ibid.* He informed Dr. Mariorenzi that he had been seen by his family physician and was given fascial plantar stretching exercises to perform, which improved his symptoms. *Ibid.* On some occasions, Claimant experienced aching and stiffness and some discomfort along the longitudinal arch. *Ibid.* Also, on occasion his knees "gave out on him," but he denied any specific swelling. *Ibid.*

Under the "Physical Examination" portion of the report, Dr. Mariorenzi stated that Claimant ambulated without a limp. *Ibid.* He noted that an examination of both knees revealed no evidence of effusion, Claimant had normal patellar tracking, no atrophy of the thighs or the calves, and full extension and full flexion. *Ibid.* He also had no ligamentous instability and the McMurray's test was negative. *Ibid.* Examination of Claimant's feet revealed a mild decrease in the longitudinal arch, more evident on the left. *Ibid.* He had no localized tenderness in the area of the insertion of the plantar fascia into the calcaneus, and had normal dynamics to the foot. *Ibid.* Circulation was also noted to be normal. *Ibid.* No x-rays were taken at the time of the evaluation. *Ibid.*

[4] The letterhead on the report containing Claimant's test results states that Dr. Alessi is board-certified in both neurology and electrodiagnostic medicine (CX 4 at 3).

Dr. Mariorenzi concluded that Claimant had no specific pathology in his knees or feet (EX A5 at 2). He wrote:

> [Claimant's h]istory of pain in his knees and his feet certainly is of the type and, in view of the lack of physical findings, would be more consistent with his physiological age. Some history also suggests that he may have, for a period of time, had a plantar strain. None of these complaints, in my opinion, are in any way related to the injury he suffered [to his right shoulder] in January of 2002. In fact, there is no history of any injury to either area as given to me by the patient.

Ibid.

A deposition of Dr. Mariorenzi was taken by Employer's counsel on February 24, 2003 (EX A6). Dr. Mariorenzi stated that he received his medical degree from Georgetown University School of Medicine, completed an internship at St. Joseph's Hospital in Providence, Rhode Island, and did a year of surgical training at the University Hospital in Boston, Massachusetts. *Id.* at 3. He then did three years of orthopedic training at the Walter Reed Army Medical Center in Washington, DC. *Ibid.* Dr. Mariorenzi is a member of the American Board of Orthopedic Surgeons and the American Academy of Orthopedic Surgeons. *Id.* at 3-4. He is a clinical instructor at Brown University School of Medicine, Chief Emeritus at St. Joseph Hospital, Department of Orthopedics, Past-President of Rhode Island Orthopedic Society, and a member of the New England Orthopedic Society, Boston Orthopedic Society, and American College of Surgeons, Arthroscopic Association of North America. *Id.* at 4. These and other credentials are reflected in Dr. Mariorenzi's curriculum vitae offered into evidence as Employer's "Exhibit A" (as part of EX A6).

During his deposition, Dr. Mariorenzi stated that he performed physical examinations of Claimant on March 25, 2002 and on June 14, 2002. *Id.* at 5. In particular, on June 14, he examined Claimant for discomfort in his feet and knees. *Ibid.* Dr. Mariorenzi reiterated the information and findings contained in the "History" and "Physical Examination" sections of his June 14th evaluation report. He then elaborated on the significance of some of these findings. He stated that normal patellar tracking indicated that Claimant did not have problems associated with his patella which could explain pain and subjective complaints of the knee tending to "give way." *Id.* at 7. Dr. Mariorenzi further indicated that the finding of no atrophy of the thighs or the calves was significant because these symptoms may result from pathology within the knee or foot. *Ibid.* He concluded that, because Claimant's muscles were normal, there was no injury to the muscle, no lack of use, and no neurological impairment to that muscle. *Id.* at 7-8. He further explained that the McMurray's test is a test for meniscal injuries of the knee. *Id.* at 8. He explained that this test is performed by putting the knee in flexion and then turning it out and extending it, and then turning the knee in and extending it. *Ibid.* Dr. Mariorenzi stated that when he performed this test on Claimant, there was no catching, no snapping, and no pain localized to the posterior aspect of the knee. *Ibid.* He also did not feel any patellar grinding. *Id.* at 9. Dr. Mariorenzi determined that Claimant's circulation was normal by checking pulses, "dorsalis pedis, posterior, interior, popliteal." *Ibid.* Based on his examination, Dr. Mariorenzi concluded, to a reasonable degree of medical certainty, that Claimant had no specific pathology in his knees or feet. *Ibid.*

Dr. Mariorenzi testified that some of Claimant's complaints "would go along with his physiological age," since at his age it is not uncommon to have aches and pains in the knees or, on occasion, in the feet. *Id.* at 10. He explained that

> It just happens particularly with the feet, the plantar fascia stretches, arch weakens, it causes this sort of pain, and, you know, as we get older, we all get a little bit of arthritic-like symptoms in our joints even though you don't find it by x-ray or MRI. We all have the aches and pains.

Ibid. Dr. Mariorenzi stated that Claimant's discomfort was the result of normal wear and tear. *Ibid*. He further stated that, based on the history that he obtained from Claimant, he did not believe any of his complaints regarding his knees were work-related. *Ibid.* He found no reason for Claimant not to continue his employment, and thought that his prognosis was good. *Id.* at 11.

Dr. Mariorenzi also testified that he examined Claimant on March 25, 2002 primarily regarding his shoulder injury. *Id.* at 12. When he was later asked by the "insurance company" to address Claimant's feet and knees in his report, Dr. Mariorenzi indicated that he would not be able to do so without performing an additional evaluation directed at Claimant's knees and feet. *Id.* at 12-13.

On cross-examination, Dr. Mariorenzi stated that Claimant did not indicate to him the pain in his knees was localized, and noted that his "real complaint" was that his knees "tended to buckle and give way on him." *Id.* at 15. Dr. Mariorenzi concluded that Claimant had no pathology in his knees or feet because he did not feel any torn cartilage or ligaments, and, at least on clinical examination, "couldn't really say he had arthritis." *Id.* at 15-16. Dr. Mariorenzi explained that he "didn't look at x-rays, but on clinical examination, he didn't have a varus to the knees," nor did he have grating or swelling. *Id.* at 16. Thus, he found no impairment or lost function in Claimant's knees.

Dr. Mariorenzi stated that in order to make a finding with regard to an impairment, he would rely on the Standard Guides provided by the American Medical Association ("AMA Guides") for the determination of permanent partial impairment. *Ibid.* He further stated that he is familiar with Table 17-31 of the AMA Guides, which ascribes impairment ratings for someone who has lost cartilage space in the knees identified by x-ray. *Id.* at 17. Dr. Mariorenzi acknowledged that it is necessary to take an x-ray as part of an evaluation when a patient is complaining of knee pain, as did Claimant. *Ibid.* He further acknowledged that he did not take or review any x-rays in Claimant's case. Dr. Mariorenzi next testified as follows:

> Q. Could it be that somebody such as Mr. Bucacci could then have an impairment, at least as defined by the AMA Guides, for lost joint space?
>
> . . .
>
> A. Certainly.

Ibid. He added that when taking an x-ray of someone who has arthritis, it is important to be very careful about the angle at which the tube hits the film, because it is very easy to change the "disc

space, the knee joint space" by changing the angle. *Id.* at 17-18. According to Dr. Mariorenzi, Table 17-31 of the AMA Guides should be used if, and only if, a patient has arthritis. *Id.* at 18. However, in Claimant's case, he did not use Table 17-31 and used Table 17-33 instead, because "[c]linically, I didn't think he had arthritis, but I don't have x-rays. So, therefore, I won't comment on that." *Ibid.* He added that he used the charts that allowed him to rate impairment based on range of motion in the knee, and found no impairment. *Ibid.*

Dr. Mariorenzi acknowledged that he is familiar with a footnote to Table 17-31, which states that a 2 percent whole person (or 5 percent lower extremity) impairment rating is given in the case of an individual who has a history of direct trauma and complaints of patella femoral pain with crepitation on physical examination without space narrowing shown on x-rays. *Id.* at 19. He explained that this footnote refers to those individuals who, on clinical examination, have chondromalacia of the patella, *i.e.*, an abnormal softening or degeneration of the undersurface of the patella. *Ibid.* He explained that in order to test for this condition,

> We put pressure on the kneecap, if you get any grating, grinding, or anything like that, although the x-rays will be perfectly normal and there will be no space narrowing, . . . then the book says because they have chondromalacia of the patella, you're allowed to give them a 2 percent impairment of the whole person, a 5 percent of the involved extremity.

Ibid. Dr. Mariorenzi stated that, in his opinion, Claimant did not have chondromalacia of the patella, and thus did not come within the category described in the footnote. *Ibid.* He further stated that chondromalacia is a permanent condition in adults. *Id.* at 20. With regard to the impairment percentage assigned by Dr. Browning, Dr. Mariorenzi stated that it "doesn't make sense . . . . He is talking about chondromalacia, how does he come up with 7 percent? I mean it doesn't follow. As you said, if you do find it, you can give someone 2 percent, but nowhere does it come to 7 percent." *Ibid.*

Dr. Mariorenzi testified that when he prepared his evaluation report, he was unaware that Claimant had a left knee injury on January 27, 1981 and a right knee injury on August 27, 1981. *Id.* at 21. He stated, however, that these alleged injuries dating back to the early 1980's would not have changed his physical findings on the day of his exam, or affect his opinions summarized above. *Id.* at 22.

Arnold-Peter C. Weiss, MD

The findings of Dr. Weiss's independent medical evaluation of Claimant are reflected in a report dated April 4, 2002 (EX B7). The "History and Review" section of this report notes that Dr. Weiss reviewed Claimant's extensive medical records. *Id.* at 1. The report further notes that Claimant has worked as a machinist for Employer for 26 years and previously reported a work-related injury to his right shoulder for which he was treated. *Ibid.* Claimant complained of "very occasional numbness and tingling in the thumb, index and ring fingers of the right hand, which really did not bother him but he was sent for an evaluation anyway." *Ibid.* He further complained of "some numbness and tingling in the thumb, index and middle fingers for the past couple of years . . . especially with reading and driving . . . , [and reported] occasional cold

intolerance during the winter months . . . [which was] not a persistent problem with his hand at other times." *Ibid.*

The section entitled "Physical Examination" notes that Claimant demonstrated good vascular refill of the nail bed and good composite flexion. *Ibid*. There was no discoloration or sweat response. Claimant's Tinel's sign at the right wrist was positive with distal radiation of symptoms, and he also had a positive Phalen's test at 15 seconds. Physical exam findings in the left hand were identical to those in the right. *Ibid.*

The report further reflects that Dr. Weiss diagnosed Claimant with a mild bilateral carpal tunnel syndrome causally related to his on-the-job activities. *Ibid.* at 2. Dr. Weiss opined that Claimant could return to work and that his prognosis was good. *Ibid.* He further stated that if Claimant were to develop persistent night tingling, he could benefit from a "wrist immobilization splinting at night." *Ibid.*

Dr. Weiss's report also notes that Claimant could experience some cold intolerance, but he did not observe any evidence of "vibration white finger syndrome." *Ibid.* He noted that no treatment was necessary at that time, but said that Claimant's condition could progress over time. *Ibid.* According to Dr. Weiss, Claimant stated that his condition "really [did] not bother him at all and he [was] happy to do nothing about it currently." *Ibid.* Dr. Weiss concluded that Claimant's loss of longitudinal sensation amounted to a 5 percent impairment rating of both upper extremities based on the AMA Guides. *Ibid.*

A deposition of Dr. Weiss took place on March 17, 2003 (EX B8). Dr. Weiss stated that he received his B.A. and M.D. degrees from Johns Hopkins University, where he also completed his residency. *Id.* at 3. He completed a fellowship in hand surgery at the Indiana Hand Center, and is board-certified in orthopedic surgery with a Certificate of Added Qualifications in hand surgery. *Ibid.* These and other credentials are reflected in Dr. Weiss's curriculum vitae offered into evidence as Employer's "Exhibit 1" (as part of EX B8).

Dr. Weiss testified that he evaluated Claimant on April 4, 2002, based on a referral from Employer. *Id.* at 5. Claimant indicated to Dr. Weiss that he had worked as a machinist for 26 years and complained of having problems with his right shoulder. *Ibid.* According to Dr. Weiss, he also complained of "some very occasional numbness and tingling in the thumb, index, and ring fingers of the right hand, which really did not bother him." *Ibid.* Claimant stated that the tingling has only been present for the past few years, did not wake him up at night, and "was really more of a buzzing he felt every so often." *Ibid.* He noticed it especially when he was reading or driving a car. *Ibid.* Dr. Weiss stated that Claimant also reported that in the winter months he had some cold intolerance, but "it wasn't a big problem, it didn't bother him while he was working." *Id.* at 6.

Dr. Weiss testified that he examined both of Claimant's hands, evaluated his neural response with Tinel's and Phalen's tests, checked for evidence of any obstructive phenomenon with a vascular filling test and a nailbed filling test, checked flexion for flexor tendons and extensor tendons, and looked for any evidence of local tenderness, arthritis, and tendonitis. *Ibid.* Dr. Weiss stated that Claimant had a fairly normal hand examination with the exception of a

positive Tinel's sign and a slightly positive Phalen's test. *Ibid.* He explained that these two tests are positive when carpal tunnel syndrome is present. *Id.* at 7. Dr. Weiss did not test Claimant's grip strength, since Claimant never complained of having insufficient grip strength and had indicated that he lifted weights and was a bicyclist. *Ibid.* He added that Claimant "told me the numbness and tingling wasn't much of a problem either, his shoulder is what was bothering him." *Ibid.*

Dr. Weiss further testified that he diagnosed Claimant with a work-related mild bilateral carpal tunnel syndrome, and concluded that Claimant could continue to work. *Id.* at 7-8. He concluded within a reasonable degree of medical certainty, based on the AMA Guides, that Claimant had a 5 percent impairment of each upper extremity. *Id.* at 8.

On cross-examination, Dr. Weiss stated that he would look for splinter hemorrhages in the nails and coloration changes which may or may not be present in order to rule out a hand/arm vibration syndrome. *Id.* at 10. He added that some patients with this condition get vascular occlusion only when they are stimulated, while others get it with cold intolerance. *Ibid.* Thus one may not see any findings on physical exam. *Ibid.* Dr. Weiss explained that, in Claimant's case, he found it most significant that Claimant did not have any historical complaints consistent with this diagnosis. *Ibid.* He stated that, although Claimant had some mild complaints consistent with cold intolerance, this intolerance can result from many different factors. *Id.* at 10-11.

Dr. Weiss acknowledged that there are many objective tests that can assist in a diagnosis of vibration syndrome, but stated "the question comes, how sensitive and specific are those tests." *Id.* at 11. He testified that some of the tests prescribed for this condition are the vibrometry test, the vermography test, and the vascular flow impairment test with laser Doppler with and without stress. *Ibid.* He added that these tests have different sensitivities and specificities, and that physicians disagree as to the usefulness of these tests in diagnosing a particular patient. *Ibid.* Dr. Weiss stated that he is familiar with the testing procedures that Claimant underwent at Vascular Associates of Norwich, but testified "I am not familiar with exactly how they do it, but I know what they are trying to accomplish . . . . They try to follow the pulse volume of the blood flow through the arteries, with or without stress, and try to find whether or not there is any abnormality based on their lab normal levels." *Id.* at 12. Upon reviewing the results of these tests, Dr. Weiss stated that the tests showed a "change in temperature reading following cold stress" and "the test impression [was] normal pulse volume recordings," while "cold stress exam was abnormal after ice water immersion." *Ibid.* Dr. Weiss concluded that "all . . . I can tell you is that the test appears to have demonstrated an abnormality based on the lab's finding of cold immersion." *Id.* at 13. He added, however, that because he does not know the sensitivity and specificity of this laboratory's testing protocol, "[w]hether or not that would be found with a patient suffering from a particular diagnosis or in normal patients, I have no way of knowing that." *Id.* at 13.

Other evidence

Employer also submitted into evidence a form dated April 12, 2002 documenting that Employer agreed to pay Claimant compensation without an award for 5 percent permanent partial disability to each hand (EX B4), and a "Notice of Final Payment or Suspension of Compensation Payments" dated September 25, 2002, which reflects that Claimant was paid $537.22 per week for 24.4 weeks in compensation for the aforementioned impairment (EX B5).

DISCUSSION

A. The nature and extent of Claimant's bilateral hand disability.

The burden of proving the nature and extent of disability rests with the Claimant. *Trask v. Lockheed Shipbuilding Constr. Co.*, 17 BRBS 56, 59 (1980). Disability is defined under the LHWCA as an "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." 33 U.S.C. § 902(10). For a claimant to receive a disability award, an economic loss coupled with a physical and/or psychological impairment must generally be shown. *Sproull v. Stevedoring Servs. of Am.*, 25 BRBS 100, 110 (1991). Disability requires a causal connection between a worker's physical injury and his inability to obtain work. Under this standard, a claimant may be found to have either suffered no loss, a total loss, or a partial loss of wage earning capacity. In adjudicating a claim relating to scheduled awards under Section 8(c) of the Act, such as the instant claim, determination of disability must be based upon a consideration of physical factors alone, and no proof of actual loss of wage-earning capacity is required. *Bachich v. Seatrain Terminals*, 9 BRBS 184, 187 (1978).

Claimant contends that he sustained a 35 percent loss of use of each hand as a result of "repetitive use of air-fed vibratory tools/repetitive use of hands/arms" (EX B1; Claimant's Pretrial Statement). The only evidence offered by Claimant in support of this impairment rating is the opinion of Dr. Browning, who assigned a 15 percent impairment for the vascular component of Claimant's condition and another 20 percent for its neurologic component (CX 2). Respondent, in turn, relies on Dr. Weiss's opinion that Claimant's impairment rating was only 5 percent (EX B7). Based on the evidence discussed below, I find that Claimant has sustained a 5 percent bilateral hand disability as a result of his employment with Employer.

It is well-established that an administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences from the evidence. *Wenciler v. Am. Nat'l Red Cross*, 23 BRBS 408, 412 (1990). It is also well-established that the administrative law judge is not bound to accept the opinion or theory of any particular medical examiner. *Hite v. Dresser Guiberson Pumping*, 22 BRBS 87, 91 (1989) citing *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962).

Dr. Browning's opinion that Claimant has a 15 percent impairment in both hands due to vascular abnormalities is neither well reasoned nor adequately supported by objective findings which would support such an impairment rating. In his first report, dated March 20, 2002, Dr.

Browning notes that Claimant had been using various air tools in his work since 1977 (CX 2 at 4). The report describes Claimant's complaints with respect to his hands as numbness and tingling (particularly when holding onto anything for a period of time), cramps, fatigue, and susceptibility to cold. *Ibid.* In March 2002, Dr. Browning did not assign an impairment rating to Claimant and instead referred him for vascular and nerve conduction studies in order to test him for a hand/arm vibration syndrome (CX 2 at 7).

Dr. Browning's second report, dated July 3, 2002, describes Claimant's June 27, 2002 follow-up visit (CX 2 at 1). The report notes that the vascular studies and temperature test showed:

> The left first digit has a very poor digital brachial ratio of .63, well below .8. He has a good deal of trouble with the cold weather. The cold challenge test is extremely positive. It was carried out to a full 20 minutes and he never regained normal temperatures.

Ibid. On this basis, Dr. Browning assigned Claimant an impairment of "15% for vascular." *Ibid.*; CX 2 at 3. He noted that he "would have assigned more, but his ambient temperatures are all right." *Ibid.*

While Dr. Browning assigned an impairment rating of 15 percent for the vascular component of Claimant's condition, he never provided a rationale for this rating. Neither one of his two reports explains how a positive cold challenge test and a "very poor digital brachial ratio" in one finger on the left hand translate into a 15 percent bilateral hand disability. Dr. Browning's March 20, 2002 report clearly states that he referred Claimant for vascular and nerve conduction studies in order to test him for hand/arm vibration syndrome (CX 2 at 7). However, based on the evidence of record, Dr. Browning never diagnosed Claimant with hand/arm vibration syndrome (nor did he rule it out) and, in fact, made no mention of it upon reviewing the test results on June 27, 2002. *Ibid.* Similarly, Dr. Bell's report does not shed any light on the possible relationship between Claimant's positive cold challenge test and an impairment rating of 15 percent.[5]

In this respect, Dr. Browning's report is apparently consistent with Dr. Weiss' opinion that despite Claimant's possible cold intolerance, he did not find any "vibration white finger syndrome." *Ibid.* Dr. Weiss explained his approach to diagnosing vibration syndrome as involved looking for splinter hemorrhages in the nails and coloration changes which may or may not be present. *Id.* at 10. In Claimant's case, he checked for evidence of any obstructive phenomenon with a vascular filling test and a nail bed filling test, and found good vascular refill of the nail bed. *Ibid.* He acknowledged that some patients with vibration syndrome get vascular occlusion with cold intolerance, so that a physical exam may miss this diagnosis. *Ibid.* He also recognized that there are many objective tests that can assist in a diagnosis of this condition (*i.e.*,

[5] I also note that during the hearing, the parties seemed to agree that since Dr. Browning had retired, the only way to get an opinion on the vascular component of Claimant's condition was to depose Dr. Bell. In fact, Claimant submitted into evidence a Notice of Taking of Deposition of Tom Bell, stating that Claimant's attorney had scheduled this deposition for May 1, 2003 (CX 6). For whatever reason, no copy of this deposition was ever submitted by Claimant, and nothing else in the record indicates that it actually took place.

the vibrometry test, the vermography test, and the vascular flow impairment test with laser Doppler with and without stress), but stated that there is a question as to how sensitive and specific these tests are. *Id.* at 11. Dr. Weiss did not conduct any of the aforementioned tests. He explained, however, that in Claimant's case he found it most significant that Claimant did not have any historical complaints consistent with this diagnosis. *Ibid.* Dr. Weiss's report notes that Claimant reported "occasional cold intolerance during the winter months . . . [which was] not a persistent problem with his hands at other times" and did not bother Claimant when he was working (EX B7 at 1; EX B8 at 6). Claimant's testimony is consistent with this observation. Although Claimant testified that he started wearing gloves more often because his hands were getting cold more easily (Tr. 40), he did not indicate whether, or how, this susceptibility to cold interfered with his ability to perform work or other physical activities. Instead, he stated merely that the building in which he worked was insufficiently heated and that he wore double gloves at work (as opposed to the single-layer leather gloves usually worn by machinists) primarily to protect his hands from injury (Tr. 51).

With respect to Claimant's positive cold challenge test, Dr. Weiss acknowledged that it "appears to have demonstrated an abnormality based on the lab's finding of cold immersion." *Id.* at 13. He stated, however, that Claimant's mild complaints of cold intolerance could result from many different factors. *Id.* at 10-11. He also added that because he does not know the sensitivity and specificity of the testing protocol, "[w]hether or not that would be found with a patient suffering from a particular diagnosis or in normal patients, I have no way of knowing that." *Id.* at 13. Unfortunately, Dr. Browning's and Dr. Bell's reports also do not answer this question, as they fail to explain the relationship between this test's results and Claimant's impairment rating.

Although one may question the thoroughness of Dr. Weiss' diagnostic procedures with respect to the vascular aspect of Claimant's condition,[6] this fact does little to boost the reliability of Dr. Browning's 15 percent rating for Claimant's bilateral hand condition. Claimant never suggested that he had any specific physical limitations resulting from his heightened sensitivity to cold, nor did he offer into evidence any objective criteria, such as the AMA Guides, which might support such a rating. Similarly, Dr. Browning gave absolutely no rationale whatsoever for the 15 percent rating he assigned to Claimant's bilateral hand condition.

As noted above, Dr. Browning assigned an additional 20 percent rating for Claimant's bilateral hand condition based on neurologic impairment (CX 2 at 1). His July 3, 2002 report states:

> Going to the neuromuscular side, he has moderately severe damage to the median nerve on electrodiagnostic testing. In addition, his two-point values are bad. All of them were 7+ the first time I saw him, and a bit better on June 27, 2002. Right grasp and pinch are significantly less than the left side, and this is also confirmed by the filament testing where he could only feel the 200 West filament and the marked drop in vibratory sensation, both 256 and 30 Hertz. Therefore, he has

[6] Claimant testified that Dr. Weiss never asked him if he had a problem with cold hands (Tr. 44). However, in his April 4, 2002 report, Dr. Weiss reported that Claimant reported "occasional cold intolerance during the winter months . . . [which was] not a persistent problem with his hands at other times." (EX B7 at 1).

> significant impairment to both large myelonated fibers and small non-myelonated fibers. After considerable consideration, I have decided to assign 20% to each hand based on the electrodiagnostic studies, the loss of two-point, the ability to feel the finer filaments, and the loss of vibration. The grasp is weaker on the right than on the left, but percentage points have not been assigned for it.

(CX 2 at 1).[7] Thus, without mention of any objective rating methodology that would support his conclusion, Dr. Browning simply added an additional 20 percent rating for neurologic impairment of Claimant's hands on top of the 15 percent rating he had already assigned for vascular impairment of Claimant's hands.[8] Although he thus found that Claimant had lost more than one-third of the use of both hands (*i.e.* 35 percent), the only work-related limitations suggested by Dr. Browning were that Claimant minimize his exposure to air tools, avoid working at ambient temperatures below 50 F, and always use antivibration gloves (CX 2 at 1-2). Similarly, while Dr. Browning's overall rating appears to have various components (*e.g.*, the severity of nerve damage and loss of vibratory sensation), he never explained the role that each component plays in calculating the ultimate rating.

In contrast, Dr. Weiss's report reflects that Claimant had a fairly normal hand examination with the exception of a positive Tinel's sign and a slightly positive Phalen's test. (EX B7). Based on these results, Dr. Weiss diagnosed Claimant with a work-related mild bilateral carpal tunnel syndrome. *Id.* at 2, 7. Relying on the criteria established in the AMA Guides, Dr. Weiss concluded that Claimant's loss of longitudinal sensation amounted to a 5 percent impairment rating of both upper extremities. *Id.*[9]

Despite the fact that Dr. Weiss did not conduct some of the tests performed by Dr. Browning, I find that his 5 percent impairment rating is more reliable than the unexplained 35 percent impairment rating assigned by Dr. Browning. First, Dr. Weiss is a highly qualified orthopedic surgeon who specializes in hand surgery (Employer's "Exhibit 1" in EX B8), while Dr. Browning's credentials were never offered into evidence by Claimant. Furthermore, unlike Dr. Browning, who gave no rationale for how he computed a 35 percent impairment rating, Dr. Weiss relied on a well-established methodology for rating impairments – the AMA Guides – and provided a justification for his conclusion consistent with the facts of this case. *Ibid.* Although the Board has stated that an ALJ is not bound by the Guides "or any other particular formula for measuring disability," *Mazze v. Frank J. Holleran, Inc.*, 9 BRBS 1053, 1055 (1978), the Board has also recognized the reliability of the AMA Guides as "a standard reference widely used by physicians in testimony before administrative law judges," *Jones v. I.T.O. Corp. of Baltimore*, 9 BRBS 583, 585 (1979). I find that Dr. Weiss's reliance on the AMA Guides in this case was appropriate and provides a rational explanation for the 5 percent impairment rating assigned.

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[7] The electrodiagnostic test relied upon by Dr. Browning was performed by Dr. Alessi, who opined that Claimant had moderately severe bilateral median mononeuropathies at or distal to the wrists, and also noted that Claimant's pin-prick sensation in both hands was "slightly diminished." (CX 4 at 2-3).

[8] Interestingly, a note attached to Dr. Browning's July 3, 2002 report reflects that on the day of his last evaluation of Claimant, June 27, 2002, he initially assigned Claimant a 15 percent rating for the neurologic impairment, but subsequently changed it to 20 percent without explanation (CX 2 at 3).

[9] Like Dr. Browning, Dr. Weiss concluded that Claimant could continue to work. *Id.* at 7-8.

I further note that Dr. Weiss's report and testimony indicate that his choice of diagnostic procedures and his ultimate diagnosis were based, in large part, on the fact that Claimant's complaints were rather minor. For example, he found no need to test Claimant's grip strength since Claimant never complained of having insufficient grip strength and had indicated that he lifted weights and rode a bicycle. *Id.* at 7. His report of examination also reflects that Claimant complained of "very occasional numbness and tingling in the thumb, index and ring fingers" which "really did not bother him" (EX B7 at 1). Similarly, during his testimony, Dr. Weiss stated that Claimant had indicated to him that these sensations in his hands "really [did] not bother him at all and he [was] happy to do nothing about it currently" (EX B8 at 2). Dr. Weiss further stated that Claimant "told me the numbness and tingling wasn't much of a problem either, his shoulder is what was bothering him." *Id.* at 7. He added that Claimant indicated to him that the tingling had only been present for the past few years, did not wake him up at night, and "was really more of a buzzing he felt every so often." *Id.* at 5.

Claimant's own testimony confirms that the impact of his condition on his functional abilities was rather mild. He testified that he mostly experienced numbness and tingling in his hands when he was gripping onto something for a prolonged period of time, giving as an example gripping the handlebars of his bike during a long race. Claimant also testified that he did not use any medications (and none were prescribed by Dr. Browning), and he engaged in a variety of strenuous recreational physical activities, such as exercising regularly at the gym, biking, and kayaking[10] (Tr. 34, 46, 49-50, 58-59). Claimant never missed any work due to his complaints, and his only complaint regarding his job performance was that he could no longer complete his tasks at the same rate as he used to[11] (Tr. 58, 24). However, Claimant testified that he is one of only a few machinists who choose to run two machines at the same time for additional compensation of $2 per hour (Tr. 18). I also note that working with vibrating air-fed tools occupies a relatively small percentage of Claimant's total work time: approximately one-half hour to forty-five minutes per shift (Tr. 28-29). Claimant's testimony also suggests that his other duties are not very repetitive, but relatively varied. Claimant testified that whenever he started a new project, he had to program the machines, set up all the tooling, and initiate a trial run (Tr. 20-21). After that, if he had to make several pieces, he could let that machine run and tend to the other machine (Tr. 21).

Based on the foregoing, I find that Claimant has sustained a 5 percent permanent partial bilateral disability of the hands.

B. Whether Claimant sustained any work-related injury to his bilateral knees.

Claimant contends that he sustained a work-related injury to his bilateral knees resulting in a 7 percent loss of use of each leg (Claimant's Pretrial Statement dated February 25, 2003). Employer disputes this assertion, citing Dr. Mariorenzi's opinion that Claimant's complaints were "a result of the normal wear and tear associated with Claimant's stated age" (R Br. at 4).

[10] Claimant's testimony makes it clear that any limitations with respect to kayaking were the result of a right shoulder injury, rather than any impairment to his hands.

[11] Claimant also indicated that he has to wear double gloves, but he later stated that the gloves were intended primarily as protection from different types of injuries, such as cuts.

The LHWCA provides a presumption that a claim comes within its provisions. *See* 33 U.S.C. §920(a). However, this statutory presumption does not dispense with the requirement that a claim of injury must be made in the first instance, nor is it a substitute for the testimony necessary to establish a *prima facie* case. According to the United States Supreme Court, a *prima facie* claim for compensation must at least allege an injury that arose in the course of employment as well as out of employment. *U.S. Indus./Fed. Sheet Metal, Inc.*, 455 U.S. 608, 615 (1982).

To establish a *prima facie* claim for compensation, a claimant need not affirmatively establish a connection between work and harm. Rather, a claimant has the burden of establishing only that (1) he sustained physical harm or pain; and (2) an accident occurred in the course of employment, or conditions existed at work, which could have caused the harm or pain. *Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984). The claimant is not required to introduce affirmative medical evidence that the working conditions in fact caused the alleged harm; rather, the claimant must show that working conditions existed which could have caused the harm. *See generally U.S. Indus./Fed. Sheet Metal, Inc.*, 455 U.S. 608, 14 BRBS at 631. A claimant's credible subjective complaints of pain can be sufficient to establish the element of physical harm necessary for a *prima facie* case and the invocation of the Section 20(a) presumption. *See Sylvester v. Bethlehem Steel Corp.*, 14 BRBS 234, 236 (1981), *aff'd sub nom. Sylvester v. Dir., OWCP*, 681 F.2d 359 (5th Cir. 1982).

If a claimant establishes a *prima facie* case, the presumption arises under Section 20(a) of the Act that the employee's injury arose out of employment. To rebut the presumption, the employer must present substantial evidence proving the absence of or severing the connection between such harm and employment. *Parsons Corp. of California v. Dir., OWCP*, 619 F.2d 38 (9th Cir. 1980); *Butler v. Dist. Parking Mgmt. Co.*, 363 F.2d 682 (D.C. Cir. 1966); *Ranks v. Bath Iron Works Corp.*, 22 BRBS 301, 305 (1989). Substantial evidence is the kind of evidence a reasonable mind might accept as adequate to support a conclusion. *See, e.g., Travelers Ins. Co. v. Belair*, 412 F.2d 297 (1st Cir. 1969).

The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury. *See* 33 U.S.C. § 902(2); *U.S. Indus.*, 455 U.S. at 615. The Board and Courts have described the meaning of "injury" in fairly broad terms. The Board has held that "if something unexpectedly goes wrong within the human frame, even if this occurs in the course of usual and ordinary work, claimant has sustained an accidental injury under the Act." *McGuigan v. Washington Metro. Area Transit Auth.*, 10 BRBS 261, 263 (1979); *see also Wheatley v. Adler*, 407 F.2d 307, 311 n. 6 (D.C. Cir. 1968). In other words, the LHWCA does not require a showing of unusual stress or exposure to anything more than the ordinary hazards of living and working. *Wheatley*, 407 F.2d at 311.

Based on the following, I find that Claimant has established that he sustained physical harm or pain while working for Respondent as a result of working conditions which conceivably could have caused that harm or pain. Claimant testified that he began experiencing increasing aches and discomfort in his knees in 1989 after Employer changed the floors on which he worked from wood to cement (Tr. 33). The onset of this discomfort was gradual and usually got

worse late at night or early in the morning (Tr. 33). Also, at times, the bottoms of his feet were "really tough" in the morning (Tr. 47).

Claimant's subjective complaints of pain and discomfort are also supported by the medical evidence of record. Dr. Browning performed a thorough physical examination of Claimant and found that his knees "grind under both kneecaps and grind in both compartments, medial and lateral." (CX 2 at 6). On this basis, Dr. Browning diagnosed Claimant with "significant chondromalacia of the patella" (CX 2 at 2). Dr. Browning also stated that he expected Claimant's knees to gradually get worse if he continued to "work on them extensively" (CX 2 at 2).

With respect to his work conditions, Claimant testified that he has to stand on his feet in one place for extended periods of time to perform his job as an inside machinist, and his knees began to ache after the wooden block floors at his job site were replaced with cement in 1989 (Tr. 30-31). He further attributes his knee problems to Employer's decision to take away all the chairs in his work area because it did not "look right" for mechanics to be sitting down (Tr. 31). Claimant testified that he could not sit down even when there was a lot of paperwork to complete or when he was writing programs (Tr. 31-32). He also noticed that he experienced relief from his knee problems when he was away from work for three weeks, traveling and hiking around Italy (Tr. 47).

Having had the opportunity to observe Claimant at the hearing, I find his testimony to be credible and supported by medical evidence. I also find that Claimant's working conditions could conceivably have caused his knee condition. Furthermore, although Dr. Browning never stated that Claimant's chondromalacia was caused by his working conditions, Claimant's credible complaints of pain that arose after the change in his working conditions are sufficient to give rise to the Section 20(a) presumption. I therefore find that Claimant is entitled to the Section 20(a) presumption because he experienced some physical harm or change in his frame while working for Respondent, sufficient to establish a *prima facie* case under the LHWCA. The burden thus shifts to Employer to establish that Claimant's condition was not caused by his employment.

As noted above, in order to rebut the Section 20(a) presumption, Employer must offer substantial evidence severing the potential connection between the disability and the work environment. *Hensley v. Washington Metro. Area Transit Auth.*, 655 F.2d 264, 13 BRBS 182 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 904 (1982), *rev'g* 11 BRBS 468 (1979); *Webb v. Corson & Gruman*, 14 BRBS 444 (1981). Furthermore, it is well-settled that mere hypothetical probabilities are insufficient to rebut the presumption, *Smith v. Sealand Terminal*, 14 BRBS 844 (1982), and the presumption is not rebutted merely by suggesting an alternate way that the claimant's injury might have occurred, *Williams v. Chevron, U.S.A.*, 12 BRBS 95 (1980).

Respondent relies on the testimony of Dr. Mariorenzi, who made the following three relevant findings: (1) that Claimant had no pathology in his knees or feet (EX A5 at 2); (2) that Claimant's knee pain "in view of the lack of physical findings, would be more consistent with his physiological age" (EX A5 at 2); and (3) that Claimant did not sustain any injury that could

otherwise explain his complaints.[12] For reasons stated below, I find that these findings are internally inconsistent and are outweighed by a more logical and better substantiated opinion offered by Dr. Browning.

Dr. Mariorenzi's finding of no pathology is contradicted by Dr. Browning's better substantiated opinion that Claimant had "significant chondromalacia of the patella" (CX 2 at 2). Chondromalacia is an abnormal softening or degeneration of the undersurface of the patella resulting in anterior knee pain. (EX A6 at 19). Dr. Mariorenzi testified that in order to test for chondromalacia, he would "put pressure on the kneecap, . . . [and check for] any grating, grinding, or anything like that." *Ibid.* In Claimant's case, Dr. Mariorenzi did not find any swelling, grating, or patellar grinding, and concluded Claimant had normal patellar tracking[13] (EX A5 at 1; EX A6 at 9, 16). He acknowledged, however, that he "didn't look at x-rays, but on clinical examination, [Claimant] didn't have a varus to the knees" (EX A6 at 16). By contrast, Dr. Browning found that Claimant's knees "grind under both kneecaps and grind in both compartments, medial and lateral. This is best heard prone, not supine" (CX 2 at 6). On this basis, he diagnosed Claimant with significant chondromalacia (CX 2 at 2).

I find that Dr. Browning's evaluation was generally more thorough and comprehensive, and his conclusion is more logical and better supported by the evidence. According to Claimant, Dr. Browning used a stethoscope to listen to his knees, while Dr. Mariorenzi did not (Tr. 35, 37, 45). While Dr. Browning explained that the grinding in Claimant's knees "is best heard prone, not supine" (CX 2 at 6), there is no evidence that Dr. Mariorenzi listened to Claimant's knees in a "prone" position. Claimant also reported that Dr. Browning's physical examination was very thorough, while Dr. Mariorenzi's was very brief (Tr. 35, 45). Furthermore, Dr. Mariorenzi acknowledged that it is appropriate to take an x-ray as part of an evaluation when a patient is complaining of knee pain, as did Claimant. (EX A6 at 17). However, Dr. Mariorenzi also acknowledged that he did not take or review any x-rays in Claimant's case, even though Claimant testified that he brought the x-rays made by Dr. Browning to the examination. *Ibid.*; Tr. 45. While Dr. Mariorenzi stated that the history he obtained from Claimant suggested that his complaints were due to the aging process and not work-related (EX A6 at 10), the evidence of record suggests a contrary conclusion, since Claimant's pain developed subsequent to a change in his working conditions, and he experienced relief from his symptoms while away from work. Dr. Mariorenzi never addressed these facts.

Dr. Mariorenzi's second finding – that Claimant's knee pain is the result of an age-related deterioration – is also less convincing than Dr. Browning's findings (R. Br. at 4). I have previously concluded that Dr. Browning's diagnosis of chondromalacia was well-reasoned and supported by a thorough examination of Claimant. Employer cannot rebut the Section 20(a) presumption "merely by suggesting an alternate way that the claimant's injury might have occurred." *Williams v. Chevron, U.S.A.*, 12 BRBS 95 (1980). Here, Dr. Mariorenzi never stated

[12] Dr. Mariorenzi stated that none of Claimant's complaints were "in any way related to the injury he suffered [to his right shoulder] in January of 2002. In fact, there is no history of any injury to either area as given to me by the patient." (EX A6 at 10).

[13] He added that normal patellar tracking indicated that Claimant did not have problems associated with his patella which could explain pain and subjective complaints of the knee tending to "give way" (EX A6 at 7).

that chondromalacia would not result from standing on hard surfaces at work for several years, but merely offered an alternative explanation (*i.e.*, age-related pain).

Finally, Dr. Mariorenzi opined that Claimant did not report any "injury" that could explain his knee pain (EX A5 at 2). However, Dr. Mariorenzi's report makes it clear that he was referring only to an accident or injury, as those terms are commonly understood: *i.e.*, unusual stress or exposure which does not occur in the ordinary course of Claimant's employment. *Ibid.*[14] However, as stated above, "injury" under the LHWCA has been defined broadly, and the Act does not require a showing of unusual stress or exposure to anything more than the ordinary hazards of living and working. *Wheatley*, 407 F.2d at 311. Dr. Mariorenzi never disputed Claimant's assertion that his working conditions, *i.e.*, standing for several hours at a time on a cement floor over the course of several years, could have caused his knee pain. As defined by the Board and the courts, there was something that went wrong within Claimant's frame, and thus there was an injury within the meaning of the Act.

Based on the foregoing, I find that Respondent failed to rebut the Section 20(a) presumption. The evidence establishes that Claimant experienced pain and discomfort in his knees associated with chondromalacia of the patella which developed as a result of his working conditions.

In its post-hearing brief, Employer cites *Gencarelle v. Gen. Dynamics Corp.* 892 F.2d 173 (2nd Cir. 1989) for the proposition that "the wear and tear on Claimant's knees are a result of normal living and not peculiar to Claimant's occupation." Emp. Br. at 4. *Gencarelle*, however, is not relevant to the issue presented here. In that case, the administrative law judge before whom the case was tried determined that the claimant's synovitis of the knees, first diagnosed on April 24, 1978, was a result of several prior knee injuries and not the result of repetitive trauma associated with bending, stooping, and climbing. *Id*. at 175. The ALJ further found that, even assuming his synovitis was an occupational disease related to repetitive trauma, Gencarelle did not timely notify his employer of the injury or timely file a claim under the Act since he knew or reasonably should have known that his knee condition was work-related as early as 1975.[15] *Ibid*. The BRB found that the employer had failed to carry its burden under Section 20(a) of the Act by showing that Gencarelle's synovitis was not work-related. *Ibid*. It nevertheless upheld the ALJ's decision and found that the claim was time-barred when filed on December 3, 1979 because the claimant's synovitis was not an occupational disease subject to the two-year statute of limitations. *Ibid*. The Court of Appeals for the Second Circuit agreed with the BRB's conclusion that the claimant's synovitis was not an occupational disease under the LHWCA subject to the two-year limitations period for filing a claim. *Id*. at 176-78. It did not, however, address the Board's determination that the employer had failed to rebut the Section 20(a) presumption that the claimant's condition was work related.

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[14] The report states: "None of these complaints, in my opinion, are in any way related to the [shoulder] injury he suffered in January of 2002. In fact, there is no history of any injury to either area as given to me by the patient." *Ibid.*

[15] Disability claims under the LHWCA are subject to a one-year limitations period except occupational disease claims which may be filed within two years from the date the employee becomes aware of, or should have been aware of, the relationship between the disease, his disability, and his employment. 33 U.S.C. §§ 913(a) and 913(b)(2).

Dr. Browning first diagnosed Claimant as having "significant chondromalacia of the patella" bilaterally in his report dated July 3, 2002 (CX 2 at 2). Employer does not contest that Claimant timely gave notice of, and filed a claim for, his injury (Tr. 6).[16] As noted above, Claimant has established a *prima facie* case entitling him to the Section 20(a) presumption, and Employer has failed to introduce substantial evidence rebutting that presumption. Claimant is thus entitled to compensation with respect to his bilateral knee condition.

C. The nature and extent of Claimant's bilateral knee injury.

As stated above, the burden of proving the nature and extent of disability rests with the Claimant. *Trask*, 17 BRBS at 59. It is well-established that the administrative law judge is not bound to accept the opinion or theory of any particular medical examiner, and may draw his own inferences from the evidence. *Hite*, 22 BRBS at 91; *Wenciler*, 23 BRBS at 412.

Dr. Browning, after conducting a thorough examination of Claimant, diagnosed significant chondromalacia of the patella and no other pathology (CX 2 at 2). His report of examination states that x-rays of both knees showed no major compartment collapse, there was no meniscal "snap," and the medial, lateral, and cruciate ligaments in both knees were "OK." *Id.* at 6. Dr. Browning also noted that Claimant's knees were not hot, red, swollen, or tender. *Ibid.* His 7 percent impairment rating thus appears to be based entirely on his finding of chondromalacia.

Employer relies on Dr. Mariorenzi's opinion that Claimant has "no specific pathology" in his knees or feet, and thus no impairment or lost function in his knees. Dr. Mariorenzi indicated that he used Table 17-33 of the AMA Guides to rate Claimant's impairment, and found no loss of function (EX A6 at 18). However, he also acknowledged that a footnote to Table 17-31 of the AMA Guides states that a 5 percent lower extremity impairment rating is appropriate for chondromalacia with complaints of patella femoral pain and crepitation on physical examination, and without narrowing of the joint space shown on x-rays. *Id.* at 19.

As stated above, I find that Dr. Browning's diagnosis of chondromalacia is better reasoned and supported by evidence than Dr. Mariorenzi's finding of no pathology. However, Dr. Browning never provided any rationale for his impairment rating of 7 percent for chondromalacia. He never indicated what rating methodology he used, and his rating is, in fact, inconsistent with the rating suggested by the AMA Guides. As Dr. Mariorenzi pointed out with reference to the aforementioned footnote to Table 17-31, "if they have [chondromalacia], then the book says . . . you're allowed to give them a 2 percent impairment of the whole person, a 5 percent of the involved extremity" (A6 at 19). I find that the AMA Guides cited by Employer's expert provide a rational basis for evaluating the functional impairment of Claimant's bilateral knee condition and that Claimant thus has a 5 percent loss of use in each knee.

[16] Although the date upon which Claimant actually filed his claim is not shown in the record, Claimant's Prehearing Statement (Form LS-18) attached to the district director's letter referring this matter to the Office of Administrative law Judges for formal hearing is dated August 26, 2002, well within the limitations period regardless of whether the injury claim results from trauma or occupational disease.

This finding is also consistent with the evidence concerning Claimant's physical abilities and limitations. Claimant's own testimony and his statements recorded in medical reports establish that the pain and discomfort in his knees are mild, and that any resulting physical limitations are minor. Claimant testified that he has not missed any time at work as a result of the problems with his knees (Tr. 58). He testified with respect to the manifestation of his knee problems when he is not at work: "Well, my only problem is like when I go hiking some times I've got to bring wraps with me, and if one of my knees starts to feel anything, I just wrap the knee" (Tr. 46-47). In addition, Claimant's testimony establishes that he engages in a number of strenuous recreational physical activities. He testified that he rides a bicycle, kayaks, and hikes (Tr. 49). He further stated that he works out in a gym, where he uses exercise bicycles, treadmills, and weights. *Ibid.* He also uses an exercise machine that requires him to push weights with his legs (Tr. 49-50).

Both Dr. Browning and Dr. Mariorenzi agree that chondromalacia is a permanent condition when diagnosed in adults (A6 at 20, CX 2 at 2). Claimant was first diagnosed with bilateral chondromalacia of the patella when examined by Dr. Browning on June 27, 2002 (CX 2 at 2). An irreversible condition is permanent *per se. Drake v. General Dynamics Corp., Elec. Boat Div.*, 11 BRBS 288, 290 n.2 (1979). The date of the diagnosis of an irreversible medical condition is the date of permanency. *Crouse v. Bath Iron Works Corp*, 33 BRBS 442(ALJ)(May 4, 1999), *Drake v. General Dynamics Corp.*, 11 BRBS 288(1979). The medical evidence thus establishes that Claimant sustained a 5 percent permanent partial disability of his bilateral knees as of June 27, 2002.

Although not specifically authorized in the Act, it has been accepted practice that interest at the rate of six percent per annum is assessed on all past due compensation payments. *Avallone v. Todd Shipyards Corp*., 10 BRBS 724 (1978). The Benefits Review Board and the federal courts have previously upheld interest awards on past due benefits to ensure that the employee receives the full amount of compensation due. *Santos v. General Dynamics Corp*., 22 BRBS 226 (1989); *Adams v. Newport News* Shipbuilding, 22 BRBS 78 (1989); *Smith v. Ingalls Shipbuilding*, 22 BRBS 26, 50 (1989); *Caudill v. Sea Tac Alaska Shipbuilding*, 22 BRBS 10 (1988); *Perry v. Carolina Shipping*, 20 BRBS 90 (1987); *Hoey v. General Dynamics Corp*., 17 BRBS 229 (1985); *Watkins v. Newport News Shipbuilding & Dry Dock Co.*, 8 BRBS 556 (1978), *aff'd in pertinent part and rev'd on other grounds sub nom*. *Newport News v. Director, OWCP*, 594 F.2d 986 (4th Cir. 1979). The Board has stated that inflationary trends in our economy have rendered a fixed six percent rate no longer appropriate to further the purpose of making claimants whole, and held that "the fixed six percent rate should be replaced by the rate employed by the United States District Courts under 28 U.S.C. § 1961 (1982). This rate is periodically changed to reflect the yield on United States Treasury Bills . . . ." *Grant v. Portland Stevedoring Company*, 16 BRBS 267, 270 (1984), *modified on reconsideration*, 17 BRBS 20 (1985). Section 2(m) of Pub. L. 97-258 provided that the above provision would become effective October 1, 1982. This Order incorporates by reference this statute and provides for its specific administrative application by the district director. The appropriate rate shall be determined as of the filing date of this Decision and Order with the district director.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED that:

A. Employer Electric Boat Corporation shall pay Claimant Raymond Bucacci compensation and interest on past due benefits under the Act for 5 percent permanent partial disabilities of the right and left hands from the date he reached maximum medical improvement on April 4, 2002 and for 5 percent permanent partial disabilities of the right and left legs from the date he reached maximum medical improvement on June 27, 2002.

B. Employer Electric Boat Corporation shall receive a credit of $13,108.17 previously paid to Claimant with respect to his bilateral hand disability.

C. Employer Electric Boat shall pay to Claimant all medical benefits to which he is entitled under the Longshore and Harbor Workers' Compensation Act.

D. Employer Electric Boat shall pay to Claimant's attorney fees and costs to be established by supplemental order.

F. The district director shall perform all calculations necessary to effect this order.

A

STEPHEN L. PURCELL
Administrative Law Judge